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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,477	08/22/2006	Torsten Brandenburger	05116835	1954
26565 7590 08/25/2009 MAYER BROWN LLP P.O. BOX 2828 CHICAGO, IL 60690				
EXAMINER MARCEYTI, ADAM M				
ART UNIT 3761		PAPER NUMBER		
NOTIFICATION DATE 08/25/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@mayerbrown.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/550,477

Applicant(s)

BRANDERBURGER ET AL.

Examiner

Adam Marcetich

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: NPL: polyethylene article.

/Leslie Deak/
Primary Examiner, AU 3761

/Adam Marcetich/
Examiner, Art Unit 3761

Continuation of 3. NOTE:

The amended claims filed 13 August 2009 are not being entered since they would require further search and consideration. Claim 1 has been amended to include the limitations of:

[1] a connecting part . . . which re-assumes its original shape again after "being pinched by" a pinching device;

[1] a tubular portion with a noncircular "axial" cross section "that is different in two mutually perpendicular directions"

[quotes added to indicate proposed amendments]

Examiner had not considered these limitations in the original search. For example, the claims were interpreted more broadly to include a tubular portion with a cross section that is non-circular in directions other than axial. The amendment defines a noncircular cross section that is different in two mutually perpendicular directions, consistent with Figs. 5a, 5b in the application. However, these limitations did not appear previously, and the noncircular cross section was interpreted as viewed sideways, and annotated in Fig. 1 of Fowles. Therefore, they would require additional resources on behalf of the Examiner and are therefore not being entered.

Continuation of 11. does NOT place the application in condition for allowance because:

RESPONSE TO ARGUMENTS

Applicant's arguments filed 13 August 2009 have been fully considered but they are not persuasive.

Applicant asserts that Fowles lacks a connecting part with a noncircular axial cross section that is different in two mutually perpendicular directions such that the cross section can be pinched with relatively minimal force. Examiner notes that the limitation of an axial cross section as claimed has not been entered, since it would change the scope of the claims as discussed above.

Applicant asserts that Fowles teaches away from the claimed invention, since Fowles seals a connector during construction. Fowles describes a closure part that is "overmolded" to the connecting part port during construction such that once it is removed, it "prevent[s] the closure from being easily reinserted into the port." (Fowles 1:64-2:5). Applicant reasons that the bag can only be filled with liquid after the closure part has already been attached to the connecting part. Applicant compares the present invention, which instead teaches a closure part which is inserted onto the connecting part after the bag has been constructed, filled with liquid, and pinched. This provides the benefit of allowing the bag to be filled with liquid after its construction, such that the bags are light and do not take up much space when they are transported to a hospital or medical facility where they will be filled with liquid and used. Examiner notes that the limitation of a bag filled after its construction does not appear in the claims. That is, the claims are directed to a bag, not necessarily its contents or method of filling.

Applicant notes that Fowles constructs the closure part and connector part of different materials, to prevent cross-linking. Applicant suggests that Fowles teaches away from the present invention, since the present invention lacks this limitation. Examiner notes that no limitations requiring the connector materials, or restricting the use of different materials appear in the claims.

Applicant asserts that Fowles lacks a self sealing membrane in the connector part, so that once the user is finished withdrawing liquids and removes the spike or rod, the connector automatically reseals. Applicant reasons that since the connector part cannot be resealed, which prevents tampering, that the connector does not automatically reseal. Examiner notes that claim 3 requires only a "self-sealing membrane arranged between the connecting part and the closure part that can be pierced by the spike for withdrawal of the liquid." Fowles forms part 12 from polyethylene, a polymer that forms PEX, LDPE and VLDPE (see article on "polyethylene" <http://en.wikipedia.org/wiki/Polyethylene>. Accessed 8/19/2009). These polymers are soft, and therefore capable of forming a self-sealing membrane. A tamper-evident closure does not preclude resealing, since a pierced membrane that reseals will also prevent leaks from residual fluid in the bag that had not been withdrawn.

Applicant contends that Burns, LeMarr and Knierbein fail to remedy the deficiencies of Fowles, namely a connecting part that could accommodate a closure part after filling the bag, or suggested a connecting part and closure part constructed of the same materials. Examiner notes that limitations of polymer compositions do not appear in the claims. Examiner cites:

*** Burns as teaching a self-sealing membrane held clamped with elastic deformation between a connecting part and a closure part;

*** LeMarr as teaching an arrow; and

*** Knierbein as teaching a flat grip piece and boat-shape.

Examiner advises Applicant to file a request for continued examination in order to enter the proposed amendments. Any polymer composition limitations need to be supported by the specification. However, Examiner finds no polymers listed in the specification.